

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

HOLLY J. WELLS,) CIVIL ACTION NO. <u>2:17-cv-2153-PMD</u>
)
Plaintiff,)
)
vs.)
)
ELEGANT HARDWOOD FLOORS, LLC,) DEFENDANTS'
FRED STONE, III,) NOTICE OF REMOVAL
)
Defendant.)
)

Defendants Elegant Hardwood Floors, LLC (“Elegant Hardwood”) and Fred Stone, III (“Mr. Stone”) (collectively “Defendants”), by and through its undersigned counsel, pursuant to 28 U.S.C. §§ 1331, 1367, 1441 and 1446, hereby notify this Court that it is removing the above-captioned action currently pending in the Court of Common Pleas for Charleston County, South Carolina, to the United States District Court for the District of South Carolina, Charleston Division. In support of this Notice of Removal, Defendants state as follows:

1. Plaintiff Holly J. Wells (“Plaintiff”) filed a Complaint against the Defendants in the Court of Common Pleas for Charleston County, South Carolina on June 14, 2017, under Civil Action Number 2017-CP-10-3042 (“the State Court Action”). A copy of the Summons and Complaint is attached as Exhibit A.
2. Plaintiff served the Defendant Mr. Stone with copies of the file-stamped Summons and Complaint on July 18, 2017.
3. Plaintiff served the Defendant Elegant Hardwood with copies of the file-stamped Summons and Complaint through Defendant’s attorney on August 7, 2017. *See Exhibit B*, Acceptance of Service.

4. This Notice of Removal has been filed with this Court within thirty (30) days of the receipt by Defendants of Plaintiff's Summons and Complaint as required by 28 U.S.C. § 1446(b).

5. The basis for removal to federal court is federal question jurisdiction pursuant to 28 U.S.C. § 1331.

6. The basis for removal to federal court is federal question jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under the laws of the United States.

7. In accordance with 28 U.S.C. § 1446(d), Defendants have contemporaneously filed a copy of this Notice of Removal with the Clerk of Court for the Court of Common Pleas for Charleston County, South Carolina.

8. In accordance with 28 U.S.C. § 1446(d), Defendants have given written notice to the Plaintiff by contemporaneously serving this Notice of Removal on counsel for the Plaintiff.

9. As required by 28 U.S.C. § 1441, Defendants seek to remove this case to the United States District Court for the District of South Carolina, Charleston Division, which is the District Court and Division embracing the place where the State Court Action has been filed.

VENUE

10. Venue properly lies in this district and division pursuant to 28 U.S.C. § 1441(a), because Plaintiff's State Court Action was originally filed in Charleston County, South Carolina, a county within the Charleston Division of the United States District Court for the District of South Carolina. 28 U.S.C. § 121(3).

FEDERAL QUESTION JURISDICTION

11. Plaintiff's Complaint includes a cause of action for violations of the Fair Labor Standards Act pursuant to 29 U.S.C. 216(e) *et seq.* See Exhibit A, Plaintiff's Complaint, ¶¶ 55-61.

12. 29 U.S.C. 216(e) *et seq.* contains federal laws under the United States Code.

13. Therefore, federal courts are vested with original jurisdiction over this cause of action. 28 U.S.C. § 1331.

SUPPLEMENTAL JURISDICTION

14. Pursuant to 28 U.S.C. § 1337, the federal court is vested with authority to retain supplemental jurisdiction over Plaintiff's remaining claims.

15. In addition to claims arising under Federal law, Plaintiff's Complaint includes causes of action for Wrongful Termination in Violation of a Clear Mandate of Public Policy, Breach of Contract / Breach of Duty of Good Faith and Fair Dealing, and Wrongful Retention of Wages. See Exhibit A, Plaintiff's Complaint, ¶¶ 35-54, 62-69.

16. These claims are based upon the same facts as the claims arising under federal law and form part of the same case or controversy such that supplemental jurisdiction is appropriate.

WHEREFORE, Defendants respectfully requests that the above-captioned action now pending in the Court of Common Pleas for Charleston County, South Carolina be removed to the United States District Court for the District of South Carolina, and this Court assume jurisdiction of this action and enter such other and further orders as may be necessary to accomplish the removal and promote the ends of justice.

WOMBLE CARLYLE SANDRIDGE & RICE

s/David B. McCormack

David B. McCormack, Esquire-Federal ID No.: 2774

Ashley K. Kelley, Esquire-Federal ID No.: 10369

Five Exchange Street

P.O. Box 999

Charleston, SC 29402

(843) 722-3400

Email: dmccormack@wCSR.com, akelley@wCSR.com

Attorneys for Defendants

Charleston, South Carolina

August 15, 2017